

Department of Energy

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within 20 working days after the individual receives notice of the operations office manager's decision.

(i) *Operations office manager's decision after reconsideration or hearing.* (1) If an individual requests reconsideration by the operations office manager but not a certification review hearing, the operations office manager shall, within 20 working days after receipt of the individual's request, send by certified mail, return receipt requested, to the individual a final decision as to suitability based upon the individual's response and other relevant information available to the operations office manager.

(2) If an individual requests a certification review hearing, the operations office manager shall decide the matter after receipt of the certification review hearing officer's report and recommendation, as provided in §711.15. The operations office manager shall, within 20 working days after receiving the hearing officer's report and recommendation, send by certified mail, return receipt requested, the operations office manager's final decision to the individual, accompanied by a copy of the hearing officer's report and recommendation, and the transcript of the certification review proceedings.

§711.13 Appointment of a certification review hearing officer and legal counsel.

(a) After receiving an individual's request for a certification review hearing, the operations office manager shall promptly appoint a certification review hearing officer. The hearing officer shall:

(1) Be a DOE attorney or a hearing official from the DOE Office of Hearings and Appeals and have a DOE Q access authorization; and

(2) Have no prior involvement in the matter or be directly supervised by any person who is involved in the matter.

(b) The operations office manager shall also appoint a DOE attorney as counsel for DOE, who shall assist the hearing officer by:

(1) Obtaining evidence;

(2) Arranging for the appearance of witnesses;

(3) Examining and cross-examining witnesses; and

(4) Notifying the individual in writing, at least 7 working days in advance of the hearing, of the scheduled place, date, and hour where the hearing will take place.

§711.14 Certification review hearing.

(a) The certification review hearing officer shall conduct the proceedings in an orderly and impartial manner to protect the interests of both the Government and the individual.

(b) An individual who requests a certification review hearing shall have the right to appear personally before the hearing officer; to present evidence in his or her own behalf, through witnesses or by documents, or by both; and be accompanied and represented at the hearing by counsel of the individual's choosing or any other person and at the individual's own expense.

(c) In conducting the proceedings, the certification review hearing officer shall:

(1) Receive all information relating to the individual's fitness for PAP certification through witnesses or documentation;

(2) Ensure that the individual is permitted to offer information in his or her behalf; to call, examine, and except as provided in paragraph (c)(3) of this section, cross-examine witnesses and other persons who have made written or oral statements, and to present and examine documentary evidence;

(3) Have the option to receive and consider oral or written statements adverse to the individual without affording the individual the opportunity to cross-examine the person making the statement in either of the following circumstances:

(i) The substance of the statement was contained in the individual's personnel security file and the head of the Federal agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government, and that the disclosure of that person's identity would substantially harm the national security; or

(ii) The substance of the statement was contained in the individual's personnel security file and the Assistant

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Secretary for Defense Programs or designee for that particular purpose has determined, after considering information furnished by the investigative agency concerning the reliability of the person and the accuracy of the statement, that —

(A) The statement appears to be reliable and material;

(B) Failure of the hearing officer to receive and consider such statement would substantially harm the national security; and

(C) The person who furnished the information cannot appear to testify due to death or severe illness, or due to some other good cause as determined only by the Assistant Secretary for Defense Programs;

(4) Ensure that if the procedures in paragraph (c)(3) of this section are used, the individual is given a description of the information, which shall be as comprehensive and detailed as the national security permits. In addition, if a statement is received under paragraph (c)(3)(ii) of this section, the identity of the person making the statement and the information to be considered shall be made available to the individual. The hearing officer shall give appropriate consideration to the fact that the individual did not have an opportunity to cross-examine such person;

(5) Require the testimony of the individual and all witnesses be given under oath or affirmation;

(6) Request that the Assistant Secretary for Defense Programs issue subpoenas for witnesses to attend the hearing or for the production of specific documents or other physical evidence; and

(7) Ensure that a transcript of the certification review proceedings is made.

§711.15 Hearing officer's report and recommendation.

Not later than 30 working days after the conclusion of the hearing, the certification review hearing officer shall forward written findings, a supporting statement of reasons, and recommendation regarding the individ-

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ual's suitability for certification or recertification in the PAP to the operations office manager. The hearing officer's report and recommendation shall be accompanied by a copy of the record of the proceedings.

§711.16 Appeal of the operations office manager's final decision.

(a) An individual who has been denied PAP certification or recertification, or whose certification has been revoked, may appeal the operations office manager's decision to the Assistant Secretary for Defense Programs. The appeal must be sent to the Assistant Secretary for Defense Programs, by certified mail, no later than 20 working days after the individual receives the operations office manager's decision.

(b) An individual who appeals an operations office manager's decision to the Assistant Secretary for Defense Programs must submit the appeal and a written supporting statement to the Assistant Secretary for Defense Programs through the operations office manager and the Deputy Assistant Secretary for Military Application and Stockpile Management. The individual must also submit:

(1) A copy of the operations office manager's final decision and any related documentation; and

(2) If a certification review hearing was conducted, a copy of the hearing officer's report and recommendation and the record of the proceedings.

(c) Within 20 working days of the receipt of an individual's appeal and supporting documents, the Assistant Secretary for Defense Programs shall review all of the information and issue a written decision in the matter. The decision of the Assistant Secretary for Defense Programs shall be final for DOE.

(d) If an individual does not appeal to the Assistant Secretary for Defense Programs within the time specified in paragraph (a) of this section, the operations office manager's decision shall be the final decision.